

ACORN ENTERPRISES,)	AGBCA No. 95-180-2
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Daniel Marchant, <u>pro se</u>)	
Owner, Acorn Enterprises)	
Oregon Trail, HC87 Box 31)	
Mountain Home, Idaho 83647)	
)	
Representing the Government:)	
)	
Kenneth D. Paur)	
Office of the General Counsel)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

August 10, 1995

OPINION BY ADMINISTRATIVE JUDGE SEAN DOHERTY

This appeal arises under Forest Service Contract No. 50-0267-3-6 awarded August 17, 1993, to Appellant. The contract was for trail construction on the Sawtooth National Forest, Camas County, Idaho. The appeal is from a Contracting Officer's (CO's) final decision dated January 23, 1995, denying Appellant's claim for \$5,857.50 for additional work directed by the Forest Service. The claim involved fourteen items, two at no cost and twelve ranging in cost from \$56.50 to \$2,150. The parties agree the work was done and do not dispute the dollar amounts associated with each claim. The Government asserts the work was to correct performance deficiencies for which Appellant was responsible. Appellant asserts Forest Service inspectors changed directions, thereby requiring extra work.

The Board has jurisdiction pursuant to the Contract Disputes Act (41 U.S.C. §§ 601-613). The

parties waived their right to a hearing and elected to have the decision issued on the written record. Appellant elected the Board's Small Claims (Expedited) Procedure, which requires a decision within 120 days from election of that procedure. The target date for decision in this case is August 21, 1995. In accord with Board Rule 12.2 (c), this decision contains primarily summary findings of fact and conclusions.

FINDINGS OF FACT

1. The Forest Service (FS) awarded Contract No. 50-0267-3-6 to Daniel Marchant, Owner, Acorn Enterprises, August 17, 1993 (Appeal File (AF) 33, 173-174). The contract was for construction of a 2.79-mile segment of the West Fork Big Smokey Trail. The trail is located within the Fairfield Ranger District of the Sawtooth National Forest, Camas County, Idaho (AF 39).

2. The contract provided, at clause C.1 SCOPE OF CONTRACT, that features of the trail were staked on the ground. Work was to be completed in accord with contract specifications and as staked on the ground. (AF 39, see also section 800 - Trail Construction, AF 123.)

3. Contract section 912.04 Trailway Excavation & Embankment stated in part (AF 142):

Excavation and embankment shall be accomplished to meet the lines and grades SHOWN ON THE DRAWINGS and DESIGNATED ON THE GROUND.

Minor deviations from the trail alignment and grade, as defined in the SPECIAL PROJECT SPECIFICATIONS, will be permitted to avoid or minimize disturbance of physical terrain.

4. Contract section 912 included special project specifications (AF 139-141). Such specifications did not define minor deviations nor did the Board find such definition elsewhere in the contract. The parties did not direct the Board to a definition.

5. The contract included 25 pages (AF 98-122) listing topographical and construction features by 50-foot increments or less including trail grade percent. One grade increment of approximately 20 feet was marked as 38% (AF 118; the entry was of questionable legibility but confirmed in the Government's brief, p. 2), and one of approximately 30 feet was marked 27% (AF 108). There were six areas of from 20 to 70 feet that were marked

from 20% to 23% (AF 105, 107, 113, 114, 118, 121). All other portions of the work were at lower grade percentages.

6. Notice to Proceed on contract work was issued August 17, 1993, with work to start August 23, 1993 (AF 201).

7. The CO's Representative (COR) on first inspection of the work found the Contractor had deviated from the flagged trail some 150 feet, creating a steep section of trail before returning to the flag line. The COR directed reconstruction of approximately 300 feet of trail along the trail line (COR Declaration ¶ 6)¹. The COR did not have authority to approve change orders and amendments (AF 212).

8. At a second inspection, the COR found major deviations including sustained slopes of up to 30% and approximately 1/2 mile that would have to be abandoned. Deviations were in excess of 300 feet horizontal and 100 feet vertically with extremely steep grades in places. Efforts were made to reflag areas of deviation to avoid rejection. (AF 217, COR Declaration ¶¶ 7-8). The CO and the inspector were present at the second inspection (AF 207-210, 217); their declarations regarding the inspection are consistent with that of the COR (CO Declaration ¶ 4; Inspector's Declaration ¶ 7).

9. Appellant offered no evidence in support of the claim items. Appellant referred to but did not include photographs in the record. Reference was made to yellow markings on an as-built map indicating authorized deviations; however, maps in the record were xerographic copies not showing color (AF 190-192).

DISCUSSION

The parties were cautioned in a conference telephone call and in a confirming letter that there was concern with the lack of evidence in the record. The parties agreed to supplement the record. Materials discussed included photographs, affidavits, job diaries, correspondence or other memoranda or sworn statements. The Government supplemented the record with sworn declarations of the CO, COR, and inspector for the contract. Appellant advised the Board that it had no supplemental data to submit. Appellant waived its opportunity to supplement the record or to submit a brief in support of its appeal.

¹ The Government supplemented the Appeal File with declarations of the CO, COR, and contract inspector; references are to numbered paragraphs within such documents.

Appellant raises general questions about the Government's administration of the contract and the contract's provision for "minor deviations" (see contract provisions Findings of Fact (FF) 3-4). The evidence of record before the Board supports the conclusion that work initially performed by Appellant deviated from that shown on the drawings and designated on the ground (FF 5, 7-8). The Government offered evidence that major deviations were found in Appellant's work and that correction was required (FF 8). The Government argued generally that it did not require more than called for in the contract and did not approve deviations to the degree initially built.

Appellant did not offer evidence to rebut that offered by the Government or evidence in support of its assertions. Mere allegations without more do not constitute proof. River City Manufacturing and Distributing Co., AGBCA Nos. 92-157-1, 92-158-1, 93-2 BCA ¶ 25,881; C. Howdy Smith, AGBCA No. 90-154-1, 92-2 BCA ¶ 24,884; Hicks Corner's Grain Elevator, Inc., AGBCA No. 86-239-1, 91-3 BCA ¶ 24,073.

DECISION

Appellant's appeal is denied.

SEAN DOHERTY
Administrative Judge

Issued at Washington, D. C.
August 10, 1995

NOTE: This decision shall have no value as a precedent and is not subject to appeal. Board Rule 12.2 (d), Sec. 9 of the Contract Disputes Act, 41 U.S.C. 608 (d). The decision will not be published.